



## FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee on Model Criminal Jury Instructions has adopted the following amended model criminal jury instructions, effective January 2016.

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### ADOPTED

The Committee has adopted amended instructions for use in cases involving felon in possession of a firearm charges, M Crim JI 11.38 and 11.38a to comport with statutory amendments to MCL 750.224f.

#### **M Crim JI 11.38 Felon Possessing Firearm: Nonspecified Felony**

The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant [possessed / used / transported / sold / distributed / received / carried / shipped / purchased<sup>1</sup>] [a firearm / ammunition<sup>2</sup>] in this state.<sup>3</sup>

(2) Second, that the defendant was convicted of [*name felony*].<sup>4</sup>

*[Use the following paragraph only if the defendant offers some evidence that more than three years has passed since completion of the sentence on the underlying offense.]*

(3) Third, that less than three years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].<sup>5</sup>

#### *Use Note*

<sup>1</sup> “Purchase” of ammunition is not barred under the statute.

<sup>2</sup> “Ammunition” is defined in MCL 750.224f(9)(a) as “any projectile that, in its current state, may be propelled from a firearm by an explosive.”

<sup>3</sup> The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006).

<sup>4</sup> The judge, not the jury, determines whether the charged prior felony is a “felony” as defined in MCL 750.224f(9)(b), or a more serious “specified felony” as defined in MCL 750.224f(10). The jury

determines whether the defendant has in fact been convicted of that charged prior felony. For prosecutions involving a “specified felony” use M Crim JI 11.38a.

<sup>5</sup> The judge’s determination of the character of the felony as explained in Use Note 4 will determine whether the prohibition extends for three years or five years. Under subsection (1) of the statute, the three-year period applies to crimes defined in subsection (9)(b) as felonies; under subsection (2), the five-year ban applies to crimes defined as “specified” felonies in subsection (10).

### *History*

M Crim JI 11.38 (formerly CJI2d 11.38) was added in October, 1993 when MCL 750.224f was enacted. The instruction was amended by the committee in September, 2001, in conjunction with the adoption of M Crim JI 11.38a, to separate the “felony” and “specified felony” versions of the offense. The possession of ammunition by felons was barred in a May 2014 statutory amendment. Amended September 2005, March 2014 and January 2016.

## **M Crim JI 11.38a Felon Possessing Firearm: Specified Felony**

The defendant is charged with possession of [a firearm / ammunition] after having been convicted of a specified felony. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant [possessed / used / sold / distributed / received/ carried / shipped / transported / purchased<sup>1</sup>] [a firearm / ammunition<sup>2</sup>] in this state.<sup>3</sup>

(2) Second, that the defendant was convicted of [*name specified felony*].<sup>4</sup>

*[Use the following paragraphs only if the defendant offers some evidence that more than five years has passed since completion of the sentence on the underlying offense and that his or her firearm rights have been restored, MCL 28.424.]*

(3) Third, that less than five years had passed since [all fines were paid / all imprisonment was served / all terms of (probation / parole) were successfully completed].<sup>5</sup>

(4) Fourth, that the defendant’s right to [possess / use / transport / sell / receive] [a firearm / ammunition] has not been restored pursuant to Michigan law.<sup>6</sup>

### *Use Note*

<sup>1</sup> “Purchase” of ammunition is not barred under the statute.

<sup>2</sup> “Ammunition” is defined in MCL 750.224f(9)(a) as “any projectile that, in its current state, may be propelled from a firearm by an explosive.”

<sup>3</sup> The prosecutor need not prove that the firearm was “operable.” *People v Peals*, 476 Mich 636, 656, 720 NW2d 196 (2006).

<sup>4</sup> The judge, not the jury, determines whether the charged prior felony is a “felony” as defined in MCL 750.224f(9)(b), or a more serious “specified felony” as defined in MCL 750.224f(10). The jury

determines whether the defendant has in fact been convicted of that charged prior felony. For prosecutions involving a “nonspecified felony” use M Crim JI 11.38.

<sup>5</sup> The judge’s determination of the character of the felony as explained in Use Note 4 will determine whether the prohibition extends for three years or five years. Under subsection (1) of the statute, the three-year period applies to crimes defined in subsection (9)(b) as felonies; under subsection (2), the five-year ban applies to crimes defined as “specified” felonies in subsection (10).

<sup>6</sup> This paragraph is to be given when the court determines that some evidence relating to restoration was admitted at trial. See *People v Henderson*, 391 Mich 612, 218 NW2d 2 (1974), addressing the burden of going forward and the burden of proof where a defendant submits evidence that he or she was licensed to carry a concealed weapon.

### *History*

This instruction was adopted by the committee in September, 2001 to separate the “specified felony” offense from the “felony” offense and to incorporate prosecutions under the former theory predicated upon the defendant’s failure to secure restoration of his or her firearm rights. The possession of ammunition by felons was barred in a May 2014 statutory amendment. Amended September 2005, March 2014 and January 2016.